IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9486 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH M BHATT

Versus

C B BHATT OR HIS SUCCESSOR IN OFFICE

Appearance:

TANNA ASSOCIATES for Petitioner

MR PJ KANABAR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/12/2000

ORAL JUDGEMENT

#. Rule. Mr.Kanabar waives service of rule on behalf of respondents nos. 1 to 5 and Mr.P.H.Pathak waives service of rule on behalf of the respondent No.6.

#. By consent of the parties, the matter is taken up for final hearing today.

#. In pursuance of the notice issued by this court, Mr.H.V.Ashara, Judge, Labour Court, Amreli is personally present in the court and he has also submitted his report. He states that, because of his brother's marriage he could not submit his report in time for which he tendered apology. He further states that, so far as the main case is concerned, one Mr.V.J.Pamnani had requested the Labour Court to allow him to withdraw the aforesaid application as according to Mr.Pamnani the matter had become infructuous. Mr.Ashara relying upon the said statement of Mr.Pamnani, allowed the said withdrawal which he found to be a genuine withdrawal at the relevant time. He has also stated before the court that since Mr.K.K.Mehta, who was earlier authorised to represent the case of the workman as well as Mr.Pamnani were belonging to the same Union and since Mr.Pamnani is the President of the said Union, he had no reason to doubt that Mr.Pamnani is withdrawing the application without the consent of his client. Report of Mr.Ashara is accepted. However, he is advised to be more careful in future as and when any application for withdrawal comes, proper verification should be made about its genuineness. I accordingly discharge the notice against him and accept his explanation.

#. In the present petition, the petitioner has challenged the order by which the Labour Court has permitted withdrawal of the petitioner's case being Complaint No.18/90. The aforesaid complaint was pending at the relevant time before the Labour Court, Amreli. It is the say of the petitioner that, in the aforesaid proceedings before the Labour Court, Amreli, initially one Mr.K.K.Mehta was representing him. The said Mr.Mehta was the Secretary of the Saurashtra Shramik Shangh which is a Trade Union. During the pendency of the said complaint, said Mr.Mehta had expired, and therefore, according to the petitioner, without his knowledge and information, another representative of the Union who was the President namely Mr.V.J.Pamnani withdrew the said complaint on 9.8.2000. According to the petitioner, even on the Adhikar Patra, Mr.Pamnani has not signed below the same. He was not authorised to represent the case of the petitioner in the Labour Court. The petitioner further submitted that, in any case, without his consent the said complaint could not have been withdrawn by Mr.V.J.Pamnani. He further submitted that, till withdrawal of the said case, he was serving on the post of Regular Inspector of Octroi, but moment the case was withdrawn, within short period he was reverted as Daily Rated Octroi Clerk by the Gram Panchayat. So according

to the petitioner, the aforesaid withdrawal has come in his way prejudicially and that this withdrawal was not bonafide.

#. Since there is a consensus between the parties, I am not dealing in detail with the facts of the case, as it may ultimately prejudice the case of the either side. Suffice it to the say that, at the time of hearing of this petition, Mr.Kanabar appearing for the respondents nos. 1 to 5 states that, he has no objection if the aforesaid complaint is restored on the file again and if the same is disposed of in accordance with law.

#. In the facts and circumstances of the case, therefore, this petition is allowed and the order disposing of the case, that is, Complaint No.18/99 by way of withdrawal is set aside. The aforesaid Complaint No.18/99 is restored on the file of the Labour Court, Amreli. Mr.Kanabar has also no objection if the petitioner is permitted to engage an advocate to take care of his aforesaid complaint before the Labour Court.

#. In the facts and circumstances of the case, both the sides are agreeable and have no objection if the aforesaid Complaint No.18/99 which is restored on the file of the Labour Court, Amreli is transferred to any other Labour Court.

#. Looking to the facts and circumstances of the case, therefore, the aforesaid Complaint No.18/99 which is restored on the file of the Labour Court, Amreli shall stand transferred to the Labour Court, Rajkot and after such transfer, concerned Judge, Labour Court, Rajkot who will be in charge of the said case, will also inform the date of hearing to the parties. It will be open for the parties to appear before the concerned Judge, Labour Court, Rajkot on 25.1.2001 for the purpose of taking the date of hearing of the aforesaid case. If, both the parties appear before the Judge, Labour Court, Rajkot, it will not be necessary for the Judge, Labour Court, Rajkot to issue fresh summons regarding intimation of the date.

#. However, it will be open for the petitioner to apply for interim relief by giving appropriate application and the concerned Judge, Labour Court may dispose of the same in accordance with law after hearing the concerned parties to such application. Whatever the observations made in this order may not be taken into consideration while disposing of the main application or the application for interim relief and the same may be disposed of on its own merits. According to the

petitioner, he has been reverted only because of the withdrawal of the case. It is clarified that, even while applying for any interim relief, it will be open for the petitioner to ask for mandatory order and the concerned Judge, Labour Court while deciding the said application may take into consideration aforesaid facts and circumstances of the case.

##. In view of the aforesaid order, it is also clarified that the order of the Administrative Officer dated 17.8.2000 which is at Annexure-D which is a consequential order in view of the withdrawal will also go and that order is quashed and set aside and it will be open for the Administrative Officer therefore to act in accordance with law. It will be open for the petitioner to apply to the Administrative Officer by representation or application that in view of the fact that reversion order is set aside by this court, the petitioner may be given appropriate posting and it will be for the Administrative Officer to pass the appropriate order in accordance with law.

##. Mr.Kanabar had lastly requested that since they could not file any reply before the Labour Court, they may be permitted to give such reply. It will be open for the Panchayat to request the Labour Court for allowing them to file written statement and if any such request is made, the same will be considered in accordance with law.

#. The petition is allowed to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)

(pathan)